

D9H7SEEF

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

12 CR 505 (GBD)

6 SATNARINE SEEBACHAN,

7 Defendant.
-----x

8 New York, N.Y.
9 September 17, 2013
10 1:00 p.m.

11 Before:

12 HON. GEORGE B. DANIELS,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 CARRIE H. COHEN

18 REBECCA MONCK RICIGLIANO

Assistant United States Attorneys

19 ANTHONY L. RICCO

Attorney for Defendant

D9H7SEEF

1 (A jury of 12 and two alternates was selected and
2 sworn)

3 THE COURT: Be seated for a couple minutes, ladies and
4 gentlemen. Before I send you home, I will give you the
5 preliminary instructions before we adjourn.

6 Members of the jury, at this point I'm required before
7 we start, required by law to instruct you generally concerning
8 your basic function, duties and certain rules which apply to
9 every jury, so that you will be better able to assess and weigh
10 the evidence as it's presented and reach a proper verdict.

11 Now, the trial has commenced with the selection of the
12 jury. The next step in the trial tomorrow morning will be
13 opening statement by the government to outline for you what the
14 prosecution intends to prove by way of evidence to be presented
15 in the case.

16 After the government's attorney makes her opening
17 statement, the defendant's attorney, if he desires, may also
18 but is not required to make an opening statement.

19 Now, what counsel for either side says in an opening
20 statement is not evidence. You may consider the opening
21 statement as a preview of what each side intends to prove by
22 way of evidence in the case.

23 After the opening statement or statements, the
24 assistant United States attorneys will present one or more
25 witnesses who will be questioned by them. Now, this is called

D9H7SEEF

1 direct examination.

2 After the assistant United States attorney completes
3 her questioning of the witness, defense counsel will be given
4 an opportunity to question that witness. This is called
5 cross-examination.

6 After the government has conclude the calling of its
7 witnesses and the introduction of any exhibits which are
8 admissible into evidence, the defendant may -- but is not
9 required -- to offer evidence in his own defense.

10 After both sides rest, the government's attorney will
11 make a closing argument, followed by the closing argument of
12 the defendant's attorney. And the government's attorney will
13 then have a brief rebuttal in response. Then I will instruct
14 you on the law, and you will retire to deliberate for the
15 purpose of reaching a verdict.

16 This is a general outline of the trial procedure. I
17 ask you to listen carefully. You don't need to take notes. We
18 have a court reporter who will take all the testimony down. If
19 you want any testimony read back during your deliberations, we
20 will bring you back in open court, and the court reporter will
21 read back those portions of the testimony.

22 Now, the evidence consists of testimony of witnesses
23 under oath and exhibits which are admitted into evidence, plus
24 any stipulations agreed upon by the attorneys. Questions in
25 and of themselves are not evidence, therefore, you cannot infer

D9H7SEEF

any fact from asking the question. It's the answer coupled with the question that constitutes evidence. For example, if a witness was asked a question "Don't you own an automobile?" and the witness replies "No," you may not infer from the mere asking of the question that the witness does own an automobile.

Now, during the court of the trial, the assistant United States attorney, or defense counsel, may object to a question or an answer on the ground that it is somehow legally improper or inadmissible. If I sustain the objection, this means I believe that the question or the answer was in some way improper. If an answer has already been given, I will instruct you to disregard it and, therefore, the answer is no longer evidence in the case. If I overrule the objection, then it means that the question is proper, and I will permit it to be answered, or, if already answered, I will permit the answer to remain as evidence in the case.

Now, please, do not resent the fact that an attorney makes objections. This is their duty, and do not hold it against them if I rule against either side.

As I will explain to you in detail in my instructions at the end of the case, as jurors in this case you are the sole judges of the facts, and I am the sole judge of the law, and you must accept the law as I give it to you, without hesitation or reservation, even if you privately disagree with me. You must keep an open mind.

D9H7SEEF

1 Throughout the trial you must not converse among
2 yourselves or with anyone else upon any subject connected with
3 the trial. You must neither offer nor express an opinion about
4 the guilt or innocence of the defendant, or reach any
5 conclusion about what the verdict should be until I finally
6 give the case to you.

7 You must not read or listen to any accounts or
8 discussions of the case in the event it's reported by
9 newspapers or other news media.

10 You must not visit or view any premises or place where
11 the offense charged was allegedly committed, or any other place
12 or premises involved in the case.

13 You must not do any research on your own, or
14 investigation about the case on your own.

15 You must decide this case solely on the evidence
16 presented at this trial.

17 You must speak to no one about the case until the
18 trial is completely ended, and you must promptly report to the
19 court any incident within your knowledge involving an attempt
20 by any person to speak with any member of the jury about the
21 case.

22 During the trial you should not speak to any of the
23 parties or lawyers involved in this case, nor any individuals
24 associated with it. They are instructed not to speak with you,
25 so don't consider it rude if they see you outside of this

D9H7SEEF

1 courtroom and they don't acknowledge your presence. Obviously,
2 if someone were to see you speaking to one of the parties
3 involved in the case, they might draw an improper inference
4 even though it might be a perfectly innocent conversation
5 unrelated to the case.

6 Now, ladies and gentlemen, as I say, tomorrow morning
7 the next step will be we will have the opening statement by the
8 government and an opening statement by the defense if they wish
9 to make an opening statement, and we will proceed with the
10 witnesses, and we will proceed every day until we finish the
11 case. I think we are on schedule, and I am going to make sure
12 we stay on schedule or get ahead of schedule.

13 Tomorrow morning I'm going to ask you to be in the
14 jury room. My law clerk is going to show you where the jury
15 room is. As you come in, just go straight to the jury room.
16 When we know all 14 of you are there we can start. We are a
17 team; we can't start until everyone arrives. I'm going to ask
18 you to be there before tomorrow before 9:30. I want to get a
19 good start the first day and see how far we are going. If it
20 looks like we have a little extra time, we can start a little
21 later in the days beyond that, but I want to keep us on
22 schedule or get ahead of schedule before I start being more
23 flexible with the time.

24 So, I will have my law clerk take you into the jury
25 room now, give you information about how to get in contact with

D9H7SEEF

1 us if there is a problem, get information from you about how to
2 contact you if you are not here and we need to try to locate
3 you. So, have a good evening; don't discuss the case. Keep an
4 open mind. I will see you tomorrow morning at 9:30, and we
5 will be prepared to begin the case at that time.

6 (Continued on next page)

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D9H7SEEF

1 (Jury not present)

2 THE COURT: After we talked about the motions in
3 limine, the only logistical thing, Mr. Ricco, you should think
4 about first of all is there is still a possibility that
5 depending how this case develops the government -- even though
6 I restrict them with regard to the opening -- the government be
7 allowed to present -- I don't know the extent of the bank
8 records and charts and that sort of thing.

9 So, I think you should discuss with the government
10 whether or not your position is that you want me to give them
11 the leeway to present that right up front if they want to
12 present that in their case in chief, or you want to wait until
13 a rebuttal case.

14 MR. RICCO: Well, I have thought about that, and
15 generally I would tell the government in advance that that door
16 is going to be open so you might as well go ahead, but that's
17 not the case here.

18 The defendant's defense in this case is finite. His
19 bottom line position is that that conversation where he said he
20 would do this man favors did not happen. And we believe that
21 99 percent of the facts in this case are not in dispute. There
22 is not going to be any dispute that the work was done. There
23 is not going to be any dispute that the materials were bought
24 and delivered. All of that happened. What is in dispute in
25 this case is whether or not Mr. Seebachan said to Mr. Papadatis

D9H7SEEF

1 that I'm going to do a favor for you, and how that happened.
2 So, we are going to spend a lot of time with their witness
3 discussing that part of his testimony.

4 And as a second point, your Honor, we ultimately
5 believe that the source of the defendant's money was irrelevant
6 to the issues at this trial. We only responded to what the
7 government put out there. I believe it makes no difference.
8 The question is whether or not he had this cash, which he did.
9 I don't think the government is saying he didn't have it. He
10 did have it. The government witnesses are not going to dispute
11 that their witnesses weren't paid in cash. We are not going to
12 challenge that. The witness is going to say he got cash, and
13 we are just going to say how much, when and where. So, that's
14 it.

15 And the defendant as we sit here today intends to
16 testify, and he is going to try to stay as focused as possible
17 about what the issue is here. So, that's pretty much where we
18 are.

19 But, your Honor, had I believed that we would cross
20 that bridge, I would just say to the government that's going to
21 happen and we might as well be right up front and deal with it.
22 But I don't think that's the case here, and I would say --
23 well, it would have to depend on something that was done during
24 our case.

25 But, Judge, I also don't believe that

D9H7SEEF

1 cross-examination opens a door, that the question on cross then
2 opens the door. Because the government if they ask the
3 defendant, well, where did you get the money from, he's got to
4 answer the question. If he doesn't answer the question, then
5 they get to bring out his proffer notes that he said he got the
6 money from Jamaica. And then that doesn't open the door to the
7 bank records, the this, the that and everything, because he has
8 to answer the question posed honestly.

9 THE COURT: Well, that's not the only thing that opens
10 the door though, so --

11 MR. RICCO: That's correct, Judge.

12 THE COURT: So, the reason I want to have you think
13 about that specifically is because if at some point in time
14 either the opening statement and/or your cross-examination of
15 their witnesses opens the door to that, then I'm going to let
16 the government go ahead, and I don't want you to be surprised.
17 The government has made the application that's what they want
18 to do, it's their position that they should still be able to do
19 that on their case in chief. They say they have not only the
20 bank records but they have a chart and a witnesses that will
21 talk about the bank record. Whether or not if we do that we
22 are going to spend that hour doing it on their case in chief or
23 hours more doing that after your case is another question, if
24 it's necessary at all.

25 But I will see how the case unfolds, and I will let

D9H7SEEF

1 them renew their application any time they think the
2 circumstances are different from what I anticipated at this
3 trial.

4 MR. RICCO: Judge, I think that's fair. I have
5 thought about other areas where I think the various issues
6 raised by the government would be open.

7 For example, every single witness that the government
8 is calling has a long-term professional, positive relationship
9 with the defendant, and so there is a great sort of urge to
10 then cross that witness, well, you've always had excellent
11 working blah, blah, blah, and we just have to be restrained not
12 to do that.

13 But certainly these witnesses have known the
14 defendant. He has been there 20 years, and so he has worked
15 with them in meetings, in board meetings. There has been a
16 great deal of work, professional work, and he has risen during
17 that time period. So, a cross that you normally would like to
18 pursue, we just have to make a decision as to whether or not we
19 would do that and what doors it would open. So, we are
20 thinking it through, Judge.

21 MS. COHEN: Your Honor, just so our opening doesn't in
22 any way go against what your Honor's ruling, I think we would
23 be permitted in opening to tell the jury that they will not see
24 any evidence of any checks written to the contractor for the
25 work.

D9H7SEEF

1 THE COURT: That's fine.

2 MS. COHEN: I mean that has to be -- OK.

3 THE COURT: Sure.

4 MR. RICCO: Judge, I agree, because there are none. I
5 mean the witness is going to say he was paid in cash, and the
6 defendant is going to say he paid in cash. There are no
7 checks.

8 THE COURT: Look, as long as you don't reference the
9 specific evidence and the content of the bank record, you can
10 say pretty much what you want to say about whether or not he
11 could afford it or couldn't afford it, or whether he had the
12 money or didn't have the money. You know, you have to be
13 careful about that.

14 MS. COHEN: Right. I was going to say, if we open on
15 he couldn't afford it, he didn't have the money --

16 THE COURT: They may want the bank records in.

17 MS. COHEN: Right. That puts us in a box because then
18 we can't deliver on what we opened on. That's why I wanted to
19 make sure what I was going to be allowed.

20 THE COURT: I am just trying to give you the
21 parameters and make sure that whatever -- these are tactical
22 decisions, so I want you to make tactical decisions based on as
23 much information I give you as to my approach to this so there
24 will be no surprises, and if that's the way you want to go,
25 fine, that's the way you want to go, but we will see how the

D9H7SEEF

1 case unfolds.

2 But Mr. Ricco may be correct that the issue for the
3 jury may narrow very quickly, you know, as to whether or not he
4 in fact did -- one, whether he received any work that he
5 otherwise should have paid for and he got it for nothing, and,
6 two, he did so in exchange for his indication, promise, express
7 or otherwise, that they would get a break on their contracting
8 work for the not-for-profit if they did him the favor by not
9 charging him everything they needed to charge him.

10 If the issue is beyond that, or needs to be proven
11 circumstantially rather than directly, we will see. But, as I
12 said, you know, there is usually pretty much direct evidence of
13 that, and it doesn't need a whole lot of circumstantial
14 evidence, depending on the nature of the attack on the
15 witnesses and what is being attacked.

16 All right.

17 MS. COHEN: Just, your Honor, your scheduling day,
18 when you take a break, lunch, just so we can schedule our
19 witnesses.

20 THE COURT: Tomorrow, if we start at 9:30, we are
21 probably going to take a break sometime between 10:30 and 11,
22 because I have the other case, and I want to give them some
23 time. We usually take a midmorning break and go until one
24 o'clock or just before one o'clock, take about an hour, hour
25 and ten minutes for lunch, usually about an hour and ten

D9H7SEEF

1 minutes, come back, take a midafternoon break, and let the jury
2 go sometime before 5 o'clock, unless we have five or ten more
3 minutes just to finish with a witness so the witness doesn't
4 have to come back.

5 OK. All right. anything else?

6 MR. RICCO: No, sir. Thank you.

7 THE COURT: Then I will see you all tomorrow morning.
8 I will see you at 9:25 in case there is anything else we need
9 to do before the jury comes in.

10 (Adjourned to September 18, 2013 at 9:30 a.m.)

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